

DRAFT SUBJECT TO REVISIONS

February 14, 2005
(shows changes to January 30 draft)

Division 2 Vested Rights

Chapter 35, Article V, Section 35-512(a) is amended as follows:

35-512 Streetscape Planting Standards

(a) Applicability

(1) Generally

In addition to developments subject to the Landscaping Standards, above, the following shall be subject to the Streetscape Planting Standards as provided herein:

- A. all developments with five (5) or more parking spaces; and
- B. all developments requiring Subdivision review.

Streetscape Planting Standards shall not apply to any street classified as a Collector, Secondary Arterial, or Primary Arterial in Table 506-1 and to all streets and trails, except alleys, in Table 506-2 Street classification unless Street Trees are required by the Street Improvement Standards, § 35-506(d), above.

(2) Expansion

When a building or parking lot is enlarged, the requirements of this Section shall be applied incrementally such that landscaping shall be required in the same proportion that the enlarged building area or off-street parking area has to the existing development. For example, a ten percent (10%) increase requires ten percent (10%) of the required street trees, with a minimum of one (1) tree to be planted.

(3) Waivers and Exemptions

Should existing site conditions and/or existing development of the property render the planting of Street Trees impracticable, the Applicant may submit a waiver or modification request in accordance with § 35-483 of this Chapter. Local streets within a residential subdivision which service residential lot driveways shall be exempt from the requirements of this Section.

Chapter 35, Article V, Section 35-506(d), Table 506-3 and Table 506-4 are amended as follows:

35-506 Transportation and Street Design

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(d) Cross-Section and Construction Standards

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Table 506-3

Conventional Street Design Standards

Street Type	Marginal Access	Alley	Access to Conservation Subdivision	Local Type A	Local Type B	Collector	Secondary Arterial ¹	Primary Arterial ²
ROW (minimum)³	36'	24'	36' 34'	50'	60'	70'	86'	120'
Pavement Width⁴	26'	18-24'	24' 7"	28'	40'	44'	48'	72-48'
Grade (maximum.)³	12%	12%	12%	12%	12%	7%	5%	5%
Grade (minimum.)⁴	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%
"K" Crest Curve	30	NR	30	30	30	55	70	70
"K" Sag Curve	35	NR	35	35	35	55	60	60
Centerline Radius (minimum.)	100'	50'	100'	100'	100'	400'	700'	1,200'
Stopping Sight Distance	75'	75'	75'	110'	150'	200'	300'	300'
Curb	No	No	No	Yes	Yes	Yes	Yes	Yes
Median	NR	NR	NR	NR	NR	NR	14' min.	14' min.
Sidewalk Width (see Subsection (q)(5))	NR	No	4' 6" ¹⁰ One Side Only	4' ⁹	4' 6" ^{6,10}	4' 6" ¹⁰	4' 6" ¹⁰	4' 6" ¹⁰
Bike Facilities⁵	NR	NR	NR	NR ⁶	NR	City Option ⁵	Yes Path ⁵	Yes Path ⁵
Streetscape Planting	NR	No	NR	NR	NR	Yes	Yes	Yes
Planting Strips	NR	NR	NR	NR	2' Min.	2' Min.	2' Min.	2' Min.

Notes and Rules of Interpretation:

NR designates the item is not required.

Table 506-3 is required for conventional option subdivisions (see § 35-202) or subdivisions not subject to Table 506-4, below), except for « Access to Conservation Subdivision », which apply only to Conservation Subdivisions (§ 35-203).

¹ For Secondary Arterial Type B right-of-ways designated on the Major Thoroughfare Plan, the required right-of-way will be a minimum of 70' with 86' at the intersections as determined by the Director of Development Services.

² For Primary Arterial Type B right-of-ways designated on the Major Thoroughfare Plan, the required right-of-way will be a minimum of 70' with 120' at the intersections as determined by the Director of Development Services.

³ See Figure 506-2.

⁴ 0.4% Optional with concrete curb and gutter.

⁵ Bike path and sidewalks can be combined. See section 35-506(d)(4).

⁶ When designated on bicycle master plan as approved by City Council.

⁷ Entry portion without parking.

⁸ Right-of-Way and pavement width requirements in established neighborhoods can be waived by the Director of Development Services as required on Capital Improvement Projects

⁹ Sidewalks shall be 4 foot in width with a planting strip.

¹⁰ Sidewalks shall be 4 foot in width with a planting strip or 6 foot in width without a planting strip.

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Table 506-4
Traditional Street Design Standards

Street Type	Trail	Alley	Lane	Local	Avenue	Main Street	Boulevard	Parkway
ROW (minimum)	14'	20'	38'	48'	82'	58'	124'	86'
Pavement Width ¹	8'-14'	10'-12'	16'-18'	22'- 27'	27'-48'	28'-36'	44'-70'	44'+
Grade (maximum)	10%	10%	10%	10%	7%	7%	7%	5%
Grade (minimum) ⁴	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%
"K" Crest Curve	NR	NR	30	30	55	55	55	70
"K" Sag Curve	NR	NR	35	35	55	55	55	60
Curb Radius	N/A	15'	15'	15'	25'	15'	25'	25'
Centerline Radius ²	95'	50'	90'	90'	250'	600'	500'	1,000'
Stopping Sight Distance	75'	75'	110	110'	150'	N/A	300'	300'
Intersection Sight Distance	15'	15'	15'	25'	75'	N/A	150'	150'
Curb	No	No	Yes	Yes	Yes	Yes	Yes	No
Median	N/A	N/A	N/A	N/A	14' in.	N/A	14' min.	14' min.
Sidewalk Width (see Subsection (g)(5))	N/A	No	4'/6'	4'/6'	4'/6'	4'/6'	4'/6'	4'/6'
Bike Facilities ^{3,5}	N/A	N/A	No	No	Yes Path	City Option	Yes Path	Yes Path
Streetscape Planting	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Planting Strips	N/A	N/A	6'	6'	6'	City Option	6-11'	7-20'

Notes and Rules of Interpretation:

NR designates the item is « not required »

Table 506-4 applies only to the following development options: Commercial Center (§ 35-204), Commercial Retrofit (§ 35-206), Traditional Neighborhood Development (§ 35-207), and Transit-Oriented Development (§ 35-208), except as provided in footnote 5, below.

¹ See Table 506-4A below. The smaller street width with on-street parking prohibited, or the larger street width coupled with on-street parking on one or both sides of the street, may be provided if the adjoining buildings are provided with (1) an NFPA 13D fire sprinkler system for Single-Family Dwelling Units, One Family Attached Dwelling Units, Two-Family (Duplex) Dwelling Units, Two-Family Attached Dwelling Units; (2) an NFPA 13R fire sprinkler system for Multi Family buildings; or (3) an NFPA 13 fire sprinkler system for Commercial Building.

² Lesser radius can be approved by the Director of Development Services.

³ Bike path and sidewalks can be combined. See section 35-506(d)(4).

⁴ Optional 0.4% with concrete curb and gutter.

⁵ Any provision in Table 506-3 (entitled "conventional street design standards") notwithstanding, interior streets in a subdivision that would otherwise be required to comply with the provisions of Table 506-3 may instead comply with the provisions of Table 506-4 (entitled "traditional street design standards"), regarding pavement width requirements only, provided that the connectivity ratio (see subsection (e), below and § 35-207(g) of this Chapter) shall comply with the requirements for a Traditional Neighborhood Development. The proposed development shall comply with footnote 1 hereto. Pursuant hereto, street types in such subdivisions shall comply with Table 506-4 as follows: An Alley shall be required to meet the street width standards for an Alley as provided in Table 506-4; a Conservation Access street shall be required to meet the street width standards for a Lane; a Local Type A street shall be required to meet the street width standards for a Street; a Local Type B street shall be required to meet the street width standards for an Avenue; a Collector street shall be required to meet the street width standards for a Main Street; a Secondary Arterial shall be required to meet the street width standards for a Boulevard; and Primary Arterial shall be required to meet the street width standards for a Parkway.

⁶ When designated on bicycle master plan as approved by City Council.

⁷ Sidewalks shall be 4 foot in width with a planting strip or 6 foot in width without a planting strip.

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Sec. 35-711 Recognition of Rights Derived From Texas Local Government Code

(a) Purpose

This section establishes an administrative process for the City to consider a claim that:

- (1) a project is entitled to proceed under Chapter 245 of the Texas Local Government Code;
or
- (2) a proposed land use is entitled to proceed under Sec. 43.002(a)(2) of the Texas Local Government Code.

(b) Recognition process

(1) Initiation

A person who asserts a claim under subsection (a) shall file a completed application for recognition of rights with the Director of Development Services or his or her designee (the "Director") on a form provided by the Director and shall pay the application review fee established by ordinance.

(2) Review

The Director shall review an application filed under this section and approve, deny, or make a written request to the applicant for specific additional information needed to complete the review no later than twenty (20) days after the date the application was filed. If the Director does not provide a written response ~~respond~~ to an application within twenty (20) days, the application is denied. The Director may extend any time period established by this section for the review or appeal of an application at the written request of the applicant.

(3) Recognition of Rights Under Chapter 245 of the Texas Local Government Code

If the Director determines the applicant has established that an application for one or more permit(s) was filed to initiate, continue, or complete a project, the Director shall issue a certificate addressed to the applicant that acknowledges and recognizes the project is entitled to vested rights under Chapter 245 of the Texas Local Government Code. The certificate shall state the filing date of the application for the permit that initiated the project, state that the City acknowledges that requirements in effect on that date shall be the sole basis for consideration of all subsequent permits required to complete the project, except as otherwise authorized by law, and shall clearly and fully describe the project for which vested rights are recognized by that certificate.

(4) Recognition of Rights under Sec. 43.002 of the Texas Local Government Code

If the Director determines the applicant has established that a planned land use meets the criteria established by Sec. 43.002(a)(2) of the Texas Local Government Code, the Director shall issue a certificate addressed to the applicant that acknowledges and recognizes the project is entitled to vested rights under Sec. 43.002 of the Texas Local Government Code. The certificate shall state the filing date of the application for the permit required by law for the planned land use, state that the City acknowledges that its requirements may not prohibit a person from beginning to use land in the manner that was planned for the land before the 90th day before the effective date of annexation, and shall clearly and fully describe the planned land use for which vested rights are recognized by that certificate.

(5) Denial

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If the Director determines that the applicant has failed to support a claim asserted under this section, the Director shall provide a written denial to the applicant and shall state all the reasons for the denial.

(c) Retention of Records

The Director shall retain a true copy of all certificates and denials issued under this section. Copies of these documents shall be retained in accordance with state law governing document retention and shall be available to the public for review during regular business hours and as otherwise provided by the Texas Public Information Act.

(d) Appeal

(1) Appeal to Planning Commission

The person asserting a claim under this section may appeal a final decision on the claim by the Director to the Planning Commission by filing a written appeal with the Director no later than fifteen (15) days after the date the person is notified of the decision. The appeal shall identify the specific decision of the Director that is appealed and the reason why the decision should be reversed or modified. The Director shall place the appeal on the agenda of the Planning Commission. The Planning Commission shall hold a hearing on the appeal and make its ruling no later than fourteen (14) days after the date the appeal was filed, or at its first available meeting after the date the appeal was filed, whichever date is later. The decision of the Planning Commission is final on the tenth day after the vote on the decision unless a review of the decision by the City Council is requested pursuant to this subsection.

(2) Review by City Council

Because significant decisions establishing or affecting city policy are most properly made by elected officials, the decision by the Planning Commission on an appeal brought under this subsection (d) is not final if City Council review of that decision is requested by:

- (a) the applicant; or
- (b) the City Manager, in a request bearing the signature of the City Manager; or
- (c) a Council Consideration Request (or an equivalent City Council agenda scheduling document) signed by the requisite number of members of the City Council to schedule a review of the decision.

A written request for City Council review shall be filed with the City Clerk no later than ten days after the date of the Planning Commission's decision. A request filed by the applicant shall be accompanied by payment of a City Council review fee in the amount established by ordinance. The City Clerk shall mail or hand-deliver copies of the request for City Council review to the applicant, the City Manager, and each member of the City Council no later than five days after the date the request is filed, and shall schedule the review of the Planning Commission's decision for a meeting of the City Council to be held no later than the first available meeting or fourteen (14) after the date the request for City Council review is filed with the City Clerk, whichever date is later. A City Council resolution enacted under this section is effective immediately upon passage and shall be a final decision of the City on an applicant's claim brought under this section.

(e) Variance

The developer of a project or a planned land use who has vested rights acknowledged or recognized by official city action may request a variance from a time limit, required action, or any other term that would otherwise cause the vested rights to expire. An individual requesting a variance shall file a written

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1 application with the Director and pay a variance application fee in the amount established by ordinance.
2 The application must identify the specific provisions for which a variance is being requested and the
3 reasons supporting approval of the variance. The Director shall review the application and provide a
4 written recommendation on the application to the Planning Commission no later than thirty days after the
5 date the application was filed. If the Planning Commission fails to make a ruling on the variance no later
6 than sixty days after the date the application was filed, the variance is denied. To grant a variance under
7 this section, the Planning Commission must find that:

- 8
- 9 (1) The applicant would suffer a hardship in the absence of a variance that is not the result of the
10 applicant's own negligence; and
11
12 (2) The applicant has been actively attempting to pursue and complete development of the project
13 that is the subject of the vested rights; and
14
15 (3) Compliance with rules and regulations passed after the recognition of vested rights would cause
16 a substantial economic hardship to the developer that would preclude the capability of completing
17 the project in a reasonable and prudent manner.
18

19 **(f) Variance appeal**

20
21 A decision by the Planning Commission on a variance requested under subsection (e) of this section may
22 be reviewed by the City Council in the same manner as a decision of the Planning Commission on the
23 appeal of a claim brought under subsection (b) of this section, in accordance with the procedures and
24 requirements established by subsection (d)(2) of this section.
25

26 **(g) Duration**

27
28 A right recognized under Chapter 245 or Section 43.002(a)(2) of the Texas Local Government Code shall
29 not extend a time period, term, or other condition established for the validity of a permit submitted for
30 recognition or subsequently issued by the city for a project, except as may be approved by the granting of
31 a variance under subsection (e) or (f) of this section.
32

33 **Sec. 35-712 Project affidavit**

34 35 **(a) Purpose**

36
37 A project affidavit is an administrative tool to provide information necessary for the City to monitor and
38 ensure compliance with its obligations under Chapter 245 or Section 43.002(a)(2) of the Texas Local
39 Government Code. A person who files an application for a permit issued by the City of San Antonio may
40 file a project affidavit with the Director on the form adopted as Section 35-B128 in Appendix B to this
41 code. As provided by Section 35-B101, the Director shall not accept a project affidavit for filing until all
42 information, data, and fees required for filing the project affidavit and the associated application for a
43 permit are included with the appropriate application.
44
45

46 **(b) Concurrent filing with permit**

47
48 Unless otherwise specifically provided by this Code, a project affidavit may be filed only in connection
49 with filing an application for a permit required by the City of San Antonio or some other government
50 agency to initiate, continue, or complete a project. The decision to file a project affidavit is optional and is
51 not required for the consideration or approval of a permit. Unless otherwise specifically provided by this
52 Code, a project affidavit may be filed on or after the date an application for a permit required to initiate,
53 continue, or complete the project is filed with the City of San Antonio or another government agency with

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regulatory jurisdiction over the project, but no later than thirty (30) days after the date that application is filed.

(c) Filing with application for utility service commitment

A project affidavit may be filed in connection with an application to obtain a service commitment for water, wastewater, gas, or electric utilities to initiate, continue, or complete a project. The decision to file a project affidavit is optional and is not required for the consideration or approval of a utility service commitment by the utility service provider. Failure to file a project affidavit with the City of San Antonio in connection with an application for a utility service commitment establishes a presumption that the application for a utility service commitment was not intended to initiate a specific or identifiable project and that the applicant does not intend to identify a project for purposes of this Division.

(d) Effect of filing project affidavit

The Director shall issue the certificate required by subsection (b)(3) or (b)(4) of Section 35-711, as applicable, to an applicant who files a completed project affidavit.

(e) Failure to file a project affidavit

Failure to file a project affidavit in connection with a permit establishes a presumption that the applicant for the permit is not initiating a specific or identifiable project, and that a permit application is sought to achieve only the action authorized by the issuance of that permit.

Sec. 35-713 Certain projects initiated before September 25, 1997

(a) Applicability

This section applies to a claim that a project was initiated by filing an application for a permit to initiate the project before September 25, 1997, and that before [the effective date of these proposed amendments] the City of San Antonio issued a development rights permit or a vested rights permit for that project.

(b) Project affidavit to confirm project as of September 24, 1997

As an alternative to filing a claim for recognition of rights under Section 35-711, a person may file a project affidavit described by Section 35-712 no later than [eighteen months after the effective date of these proposed amendments]. If a project affidavit is filed under this section, the Director shall issue the certificate required by subsection (b)(3) or (b)(4) of Section 35-711. A certificate issued under this subsection shall state that the City acknowledges that requirements in effect on September 24, 1997, shall be the sole basis for consideration of all subsequent permits required to complete the project, except as otherwise authorized by law, and shall clearly and fully describe the project for which vested rights are recognized by that certificate.

Sec. 35-714 Project initiated on or after September 25, 1997 and before June 4, 2001

(a) Applicability

This section applies to a claim that a project was initiated by filing an application for a permit to initiate the project on or after September 25, 1997 and before June 4, 2001.

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(b) Application for plat

As an alternative to filing a claim for recognition of rights under Section 35-711, a person may file a project affidavit described by Section 35-712 for land included in an application for a plat that was filed on or after September 25, 1997, and before June 4, 2001. The Director shall issue the certificate required by subsection (b)(3) or (b)(4) of Section 35-711, as applicable, to any applicant who files a completed project affidavit that describes the project initiated by the application for the plat. A project affidavit filed to satisfy the requirements of this subsection may be filed at any time.

Sec. 35-715 Project initiated on or after June 4, 2001 and before [the effective date of these proposed amendments]

(a) Applicability

This section applies to a claim that a project was initiated by filing an application for a permit to initiate the project on or after June 4, 2001 and before [the effective date of these proposed amendments].

(b) Recognition of project

A claim made under this section shall be processed pursuant to Section 35-711; provided, however, that upon request the Director shall issue the certificate required by subsection (b)(3) or (b)(4) of Section 35-711, as applicable, to any applicant who was issued a development rights permit or a vested rights permit by the City of San Antonio for that project before [the effective date of these proposed amendments].

Sec. 35-716 Project initiated after [the effective date of these proposed amendments]

(a) Applicability

This section applies to a project initiated after [the effective date of these proposed amendments] by filing an application for a permit required to initiate a project.

(b) Recognition of project

The Director shall issue the certificate required by subsection (b)(3) or (b)(4) of Section 35-711, as applicable, to any applicant who files a project affidavit in accordance with Section 35-712 of this Code.

Sec. 35-717 Modification to project affidavit

(a) Limited change in acreage proposed for previously identified use

A project affidavit modification may be filed with the Director at any time to increase or decrease the number of acres within the project proposed for a use identified in the original project affidavit. A modification to the boundaries or acreage proposed for a use proposed in the original project affidavit is authorized if that modification does not cumulatively increase the number of acres proposed for the use by more than ten percent (10%) of the acreage proposed for that use in the original project application. The Director shall issue a revised certificate under subsection (b)(3) or (b)(4) of Section 35-711 to

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describe the revised project and acknowledge that the requirements in effect on the date identified on the original certificate shall be the sole basis for consideration of all subsequent permits required to complete the project, except as otherwise authorized by law.

(b) Minor amendment to a Master Development Plan

A minor amendment to an approved Master Development Plan defined by Section 35-412(g)(2) of this Code that otherwise satisfies the criteria established by subsection (a) of this section does not affect a certificate issued under subsection (b)(3) or (b)(4) of Section 35-711 or the rights acknowledged and recognized by that certificate.

(c) Changes caused by government action

A modification to a project that is required to comply with or conform to an action taken by a government agency does not affect a certificate issued under subsection (b)(3) or (b)(4) of Section 35-711 or the rights acknowledged and recognized by that certificate. This subsection does not apply to a modification required or authorized by a change in zoning on all or a portion of the area in the project, except as otherwise provided by law.

(d) All other project changes

Any modification to a project that is not authorized by this section constitutes a new project with respect to the area of the project that is modified. The entire acreage included in a modification otherwise permissible under subsection (a) of this section constitutes a new project if the increase in acreage exceeds ten percent (10%) of the acreage identified for the use in the original project application (i.e., if the acreage devoted to a use identified in the original project application is increased by 15%, the entire 15% increase in acreage is considered a new project, not just the acreage that exceeds 10% of the original acreage devoted to the use). Development of the remainder of a project that conforms to the original project affidavit or to a modified project affidavit authorized by this section is not a new project, and may continue to be developed in accordance with the certificate under subsection (b)(3) or (b)(4) of Section 35-711.

Sec. 35-718 Completion of a project

(a) Project completion

A project is complete when the underlying permit for the project expires. If there is no expiration date for that permit,

(1) -Aa multi-phase project on less than [250 or some other number] acres is complete twenty years after the permit was approved, and a multi-phase project on [250 or some other number] of acres or more is complete [thirty or some other number] years after the permit was approved; provided, however, that during that twenty year period progress towards development of the project must be equivalent to the progress required for the continuing validity of a Master Development Plan as established by Section 35-412(h) of this Code. If that progress is not demonstrated, the project is considered complete upon the failure of the developer to complete the requisite steps towards development after eighteen (18) months or ten (10) years, as applicable.

(2) A single-phase project is complete ten years after the initial permit was approved.

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A project is complete when the underlying permit for the project expires. If there is no expiration date for that permit, a project is complete twenty years after the permit was approved; provided, however, that during that twenty year period progress towards development of the project must be ~~demonstrated by the expenditure of infrastructure expenses (defined in the same manner as Ordinance 86715) equal to _____ percent (____%) of _____?~~.

(b) Effect of project completion

After a project is complete, the development or redevelopment of property included in a completed project is a new project for purposes of this Code.

Sec. 35-719 Compliance with Exempted Ordinances

(c) Purpose

This section identifies exemptions established by Texas Local Government Code § 245.004 that authorize the City of San Antonio to require development to comply with certain regulations enacted after a project has been initiated.

(d) Exempted Ordinances

Notwithstanding the issuance of a certificate under subsection (b)(3) or (b)(4) of Section 35-711 or the rights acknowledged and recognized by that certificate, all development of and in a project shall comply with:

(1) a permit that is at least two years old, is issued for the construction of a building or structure intended for human occupancy or habitation, and is issued under laws, ordinances, procedures, rules, or regulations adopting only:

(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; or

(B) local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons;

(2) zoning regulations that do not affect lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant required by a municipality;

(3) regulations for sexually oriented businesses;

(4) municipal or county ordinances, rules, regulations, or other requirements affecting colonias;

(5) fees imposed in conjunction with development permits;

(6) regulations for annexation;

(7) regulations for utility connections;

(8) regulations to prevent imminent destruction of property or injury to persons from flooding that are effective only within a flood plain established by a federal flood control program and enacted to prevent the flooding of buildings intended for public occupancy;

(9) construction standards for public works located on public lands or easements;

(10) regulations to prevent the imminent destruction of property or injury to persons if the regulations do not:

(A) affect lot size, lot dimensions, lot coverage, building size, residential or commercial density, or the timing of a project; or

(B) change development permitted by a restrictive covenant required by a municipality.

(e) Identification of Exempted Ordinances

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(1) The Director shall prepare and make available to the public a comprehensive list of ordinances, codes, code provisions, other regulations exempted under Texas Local Government Code § 245.004 and applied to development under subsection (b) of this section.

(2) The City Council shall include a statement of its intent in all ordinances adopted after [the effective date of this ordinance] that the provisions of that ordinance are or are not exempted under Texas Local Government Code § 245.004 and are or are not to be applied to development under subsection (b) of this section.

Sec. 35-72019 Permit for dormant project

(a) Purpose

This section implements the authority established by Texas Local Government Code § 245.005 to establish an expiration date for a permit that does not otherwise have an expiration date.

(b) Applicability

The provisions of this section apply to any permit that on May 11, 2000:

- (1) had no expiration date; and
- (2) was issued to begin or continue a project that is now dormant, as that term is defined by subsection (d) of this section.

(c) Expiration of a permit for a dormant project

A permit described by subsection (b) of this section expires on May 11, 2004 (the fifth anniversary of the effective date of Chapter 245 of the Local Government Code). A permit that expires pursuant to this section extinguishes any rights established by that permit.

(d)(f) Dormant project; progress towards completion of a project

A project is dormant if there was no progress towards completion of the project before May 11, 2004. Progress towards completion of a project shall include any one or more of the following:

- (1) an application for a final plat or plan is submitted to a regulatory agency;
- (2) a good-faith attempt is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project;
- (3) costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
- (4) fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or
- (5) utility connection fees or impact fees for the project have been paid to a regulatory agency.

Sec. 35-7210 Consent agreement

(a) Applicability

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The provisions of this Section apply to any claim to develop property in which the applicant asserts an exemption from any provision of this Chapter or any other city codes or ordinances based on:

- (1) a legal theory recognized by Texas common law that authorizes that exemption (a "common law vested right"); or
- (2) a right claimed under the procedure established by Section 35-711 (a "statutory vested right").

(b) Procedure for review and approval of a consent agreement

(1) Initiation

A person who asserts a claim under subsection (a) shall file a completed application for a consent agreement with the Director on a form provided by the Director and shall pay the application review fee established by ordinance.

(2) Consent agreement in connection with a common law vested right

An applicant for a consent agreement based on a claim asserting a common law vested right may file an application at any time before instituting judicial proceedings to assert that claim.

(3) Consent agreement in connection with a statutory vested right

An applicant under Section 35-711 may propose a consent agreement concurrently with an application filed under Section 35-711 or at any time prior to a final decision under Section 35-711.

(4) Analysis and Recommendation by Director

The Director, after consulting with the City Attorney, may recommend to the Planning Commission the approval of a consent agreement to resolve a dispute concerning a common law or statutory vested right. Before making a decision to recommend approval of a consent agreement, the Director shall require the applicant to provide credible evidence sufficient to support all required elements of a judicial finding of the common law vested right or to support a judicial finding that the applicant has a protected statutory vested right. A request for a consent agreement must include all documents that support the criteria established by this subsection. The Director shall review an application filed under this section and approve, deny, or make a written request to the applicant for specific additional information needed to complete the review no later than twenty (20) days after the date the application was filed. If the Director does not provide a written response respond to an application within twenty (20) days, the application is denied. The Director may extend any time period established by this section for the review or appeal of an application at the written request of the applicant. The Director may request additional relevant material prior to making his or her recommendation to the Planning Commission.

(5) Denial by Director

The Director may deny a request for a consent agreement if the Director, after consulting with the City Attorney, determines the applicant has not provided the credible evidence required by subsection (4) of this section. The applicant may appeal to the Planning Commission the decision of the Director to deny the application for a Consent Agreement in accordance with the appeal procedures established by Section 35-711(d).

(6) Review and approval by Planning Commission

The Planning Commission, in its sole discretion, may approve a consent agreement if it determines, after consultation with the City Attorney, that the applicant has provided credible evidence sufficient to support

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all required elements of a judicial finding of the common law vested right or to support a judicial finding that the applicant has a protected statutory vested right, and that a consent agreement to resolve the dispute is in the public interest after considering the cost and uncertainty of litigation. The decision of the Planning Commission is final on the tenth day after the vote on the decision unless a review of the decision by the City Council is requested pursuant to this subsection (b).

(7) Review and approval by City Council

The decision by the Planning Commission to approve a consent agreement under this subsection (b) is not final if a City Council review of that decision is requested by a Council Consideration Request (or an equivalent City Council agenda scheduling document) signed by the requisite number of members of the City Council to schedule a review of the decision. A written request for City Council review shall be filed with the City Clerk no later than ten days after the date of the Planning Commission's decision. The City Clerk shall mail or hand-deliver copies of the request to the applicant, the City Manager, and each member of the City Council no later than five days after the date the request is filed. The City Clerk shall schedule the review of the Planning Commission's decision for a meeting of the City Council to be held no later than the first available meeting or fourteen (14) days after the date the request for City Council review is filed with the City Clerk, whichever date is later. A City Council resolution enacted under this section is effective immediately upon passage and shall be a final decision of the City on an applicant's claim brought under this section.

(8) Terms and conditions of a consent agreement

A consent agreement shall be approved as to form by the City Attorney and signed by the Director and the applicant. A consent agreement shall include the following:

- (a) a legal description of the subject property and the names of all legal and equitable owners;
- (b) the duration of the consent agreement and the conditions that may result in its termination;
- (c) a description of the development project authorized by the consent agreement, including all proposed uses to be permitted on the property;
- (d) a listing of all city regulations to be applied to development of the project;
- (e) a finding that the consent agreement is intended to resolve a good-faith dispute concerning development rights and applicable regulations without the cost and uncertainty to both parties of litigation; and
- (f) a description of any other conditions, terms, restrictions, or requirements determined to be necessary for the preservation and protection of the public health, safety, or welfare.

Language to be included as a separate section of the ordinance that adopts these UDC amendments:

The Director shall give notice of this ordinance by mail addressed to the last known mailing address of each person who was issued a formal vested rights determination or development rights permit by the city, according to the application on file with the Director. The notice shall include a copy of this ordinance and a short statement that advises the recipient to read the enclosed ordinance and to contact the Director with any questions that may be raised by the ordinance.

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NOTE: ~~The ordinance will also include appropriate amendments to the Streetscape Landscape Standards that will clearly establish that requirements for landscaping public right-of-way are not intended to be applied to a project that began before those landscaping standards were adopted. I will forward that language as soon as it is completed.~~

STILL TO BE DRAFTED:

1. ~~_____ List of ordinances/code provisions exempted by Texas Local Gov't Code Sec. 245.004 and therefore will be applied to all development projects (no vesting).~~

2. ~~_____ Notice procedure to those who previously received a formal vested rights determination or development rights permit and who may be affected by this change in the code.~~